

May 27, 2014

VIA OVERNIGHT MAIL

U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Rachel Tennis, Attorney-Adviser (ORC-3-4)

Re: Chemtura Corporation / Yosemite Site

Dear Ms. Tennis:

I write to you as restructuring counsel for Chemtura Corporation (“**Chemtura**”) in response to a Notice of Intent to Issue Special Notice Letters for the Yosemite Site in San Francisco, California, dated May 15, 2014 (the “**Notice**”), which was sent to Chemtura by the United States Environmental Protection Agency (“**EPA**”). As explained in more detail below, Chemtura has been discharged from claims relating to the Yosemite Slough Site (the “**Yosemite Site**” or “**Site**”) as a result of its chapter 11 case filed several years ago. Any attempt to pursue Chemtura for obligations relating to the Yosemite Site violates federal law and a federal bankruptcy court injunction. Therefore, we request that the EPA confirm in writing that it will cease and desist from pursuing Chemtura in relation to matters concerning the Yosemite Site.

Chemtura’s Chapter 11 Discharge and the Yosemite Site

On March 18, 2009 (the “**Petition Date**”), Chemtura commenced a case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). Chemtura’s chapter 11 case was jointly administered with cases of its affiliates under case number 09-11233 (REG).

On November 3, 2010, the Bankruptcy Court entered an order (the “**Confirmation Order**”) confirming the *Joint Chapter 11 Plan of Reorganization of Chemtura Corporation, et al.* (the “**Plan**”) [Dkt. No. 4409]. On November 10, 2010, the “**Effective Date**” under the Plan occurred, and Chemtura emerged from chapter 11 as a reorganized company.

Section 1141 of the Bankruptcy Code provides, in relevant part, that the confirmation of a chapter 11 plan “discharges the debtor from any *debt* that arose before the date of such confirmation.” 11 U.S.C. § 1141(d)(1)(A) (emphasis added). Section 524 of the Bankruptcy Code further provides that a discharge “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such *debt* as a personal liability of the debtor.” 11 U.S.C. § 524(a)(2) (emphasis added).

The Bankruptcy Code defines “debt” as “liability on a claim,” 11 U.S.C. § 101(12), and defines “claim” as “a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, *contingent*, matured, *unmatured*, disputed, undisputed, legal, equitable, secured, or unsecured” 11 U.S.C. § 101(5)(A) (emphasis added); *see also* H.R. Rep. No. 95-595, at 309 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6266; S. Rep. No. 95-989, at 21, reprinted in 1978 U.S.C.C.A.N. 5787, 5807 (noting that “[b]y this broadest possible definition [of the term ‘claim’] . . . the bill contemplates that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case . . . [and] permits the broadest possible relief in the bankruptcy court.”).

Consistent with sections 101, 524 and 1141 of the Bankruptcy Code, paragraphs 141-147 of the Confirmation Order provide explicitly that the confirmation of the Plan results in the permanent injunction of “Claims” arising before the Effective Date. [Dkt. No. 4409]. Section 1.1.27 of the Plan defines “Claim” as “any claim against a Debtor or, to the extent specifically referenced in the Plan, a Non-Debtor Affiliate, as defined in section 101(5) of the Bankruptcy Code.”

The Bankruptcy Code’s definition of “claim”, which is incorporated into the Plan, is “designed to ensure that ‘all legal obligations of the debtor, *no matter how remote or contingent*, will be able to be dealt with in the bankruptcy case.’” *Cal. Dep’t of Health Servs. v. Jensen (In re Jensen)*, 995 F.2d 925, 929 (9th Cir. 1993) (emphasis omitted) (citations omitted). This broad definition:

performs a vital role in the reorganization process by requiring, in conjunction with the bar date, that all those with a potential call on the debtor’s assets, provided the call in at least some circumstances could give rise to a suit for payment, come before the reorganization court so that those demands can be allowed or disallowed and their priority and dischargeability determined.

Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp., 266 B.R. 575, 580 (S.D.N.Y. 2001) (citation omitted).

Importantly, with respect to any potential CERCLA liability relating to the Yosemite Site, the Second Circuit Court of Appeals has held that a debtor’s cleanup

obligation under CERCLA is a “claim” under the Bankruptcy Code that arises at that time of the release of contamination, regardless of when such contamination is discovered or ultimately cleaned up. *See In re Chateaugay Corp.*, 944 F.2d 997, 1005-1006 (2d Cir. 1991). Notably, any potential liability of Chemtura’s at the Yosemite Site could only result from a release that occurred before the Petition Date as Chemtura did not dispose of any hazardous materials near the Site during or after its chapter 11 case. Accordingly, such potential liability would constitute a claim that arose before the Petition Date and was discharged under the Bankruptcy Code and the Plan.

The EPA Had Sufficient Notice to File a Proof of Claim for the Yosemite Site

In order to discharge its prepetition claims, a debtor must provide its creditors with the opportunity to file such claims in the bankruptcy case so that they may be addressed as part of the chapter 11 plan. *See Daewoo Int’l. (Am.) Corp. Creditor Trust v. SSTS Am. Corp.*, 2003 WL 21355214, *3 (S.D.N.Y. June 11, 2003). Chemtura did exactly this in its chapter 11 case. Specifically, on August 21, 2009, upon motion by Chemtura, the Bankruptcy Court entered an order (the “**Bar Date Order**”), which required any person or entity asserting a claim that arose against Chemtura before the Petition Date to file a proof of such claim with the Bankruptcy Court on or before October 30, 2009 (the “**Bar Date**”). [Dkt. No. 992] The Bar Date Order provided that anyone who fails to timely file a proof of claim is forever barred from asserting the claim against Chemtura.

The EPA, including Region IX, was served with a copy of the general notice of the Bar Date, which required the EPA to file any claims relating to Chemtura (and its predecessors) before the Bar Date. [Dkt. No. 1049] Additionally, as a supplement to mailing the general Bar Date notice, Chemtura published notices in newspapers throughout the country in an effort to reach any potential unknown holders of tort and environmental claims. *See DePippo v. Kmart Corp.*, 335 B.R. 290, 296 (S.D.N.Y. 2005) (“It is well-settled that when a creditor is ‘unknown’ to the debtor[,] publication notice of the claims bar date is adequate constructive notice sufficient to satisfy due process requirements”); *In re Chateaugay Corp.*, 2009 WL 367490 at *5 (Bankr. S.D.N.Y. Jan. 14, 2009) (“[F]or unknown creditors whose identities or claims are not reasonably ascertainable, and for creditors who hold only conceivable, conjectural or speculative claims, constructive notice of the bar date by publication is sufficient.”).

In response to Chemtura’s thorough noticing of the Bar Date, the EPA filed several claims in Chemtura’s chapter 11 case, including claims for sites within Region IX, but not including the Yosemite Site. The EPA also was participated in an active dialogue with Chemtura throughout the entire chapter 11 case with respect to *all* of Chemtura’s environmental liabilities. The EPA’s filed claims and discussions culminated in a comprehensive settlement agreement by which Chemtura paid the EPA more than \$25 million to resolve its potential liabilities with respect to approximately 20 sites. The

settlement was approved by the Bankruptcy Court on September 17, 2010. [Dkt. No. 4026] The EPA settlement did not cover the Yosemite Site and the EPA never filed a claim against Chemtura relating to this Site nor discussed the Site with Chemtura during settlement negotiations. The EPA, however, clearly knew about the Yosemite Site, as the EPA first sent Chemtura a general notice relating to the Site on August 5, 2008, well before Chemtura's chapter 11 case, and Chemtura listed the Site on its response for Question 17 on its Statement of Financial Affairs filed with the Bankruptcy Court before the Bar Date.

The Second Circuit's analysis in *Chateaugay* confirms Chemtura's position with respect to discharge of any liability relating to the Yosemite Site. In that case, the Second Circuit rejected the EPA's argument that the debtor (LTV) could not discharge its environmental liabilities at certain environmental sites. The Second Circuit observed:

True, EPA does not yet know the full extent of the hazardous waste removal costs that it may one day incur and seek to impose upon LTV, and it does not yet even know the location of all of the sites at which such wastes may yet be found. But the location of these sites, the determination of their coverage by CERCLA, and the incurring of response costs by EPA are all steps that may fairly be viewed, in the regulatory context, as rendering EPA's claim "contingent," rather than as placing it outside the Code's definition of "claim."

In re Chateaugay Corp., 944 F.2d at 1006.

Here, just as in *Chateaugay*, the EPA was aware of Chemtura and its predecessor companies before the Bar Date and already identified Chemtura as a potentially responsible party for the Site. Thus, not only was the EPA in the best position to discover any potential contamination at the Yosemite Site as a result of any prepetition release of hazardous substances at that Site, but it had in fact already identified a number of specific contaminants at the Site. The EPA filed claims covering other sites, including sites within Region IX, but chose not to file a claim against Chemtura for potential liability with respect to the Yosemite Site before the Bar Date. As a result, the EPA is now enjoined from pursuing any such claim against Chemtura under the Bankruptcy Code and the Plan.

* * *

May 27, 2014

For the foregoing reasons, Chemtura has been discharged of any potential environmental liability with respect to the Yosemite Site under the Bankruptcy Code and the Plan. Please confirm to me in writing that the EPA at your earliest convenience will cease and desist from all actions against Chemtura with respect to the Yosemite Site. I would be happy to speak with you directly to resolve any questions that you have with respect to this matter.

Sincerely yours,



Craig A. Bruens

Cc: Ms. Kirstin Etela

From: (212) 909-6000
Craig A. Bruens
Debevoise & Plimpton LLP
919 Third Avenue

Origin ID: JRBA

FedEx
Express

J14101402070326

New York, NY 10022

SHIP TO: (415) 972-3746

BILL SENDER

Rachel Tennis Attorney-Advsr orc,3-
U.S.Environmental Protection Agency
75 HAWTHORNE ST

SAN FRANCISCO, CA 94105

Ship Date: 27MAY14
ActWgt: 0.5 LB
CAD: 103845105/WSX12750

Delivery Address Bar Code



Ref # 24239.1001.cabruens
Invoice #
PO #
Dept #

RELEASE#: 3785346

WED - 28 MAY 10:30A
PRIORITY OVERNIGHT

TRK# 7701 0628 3650

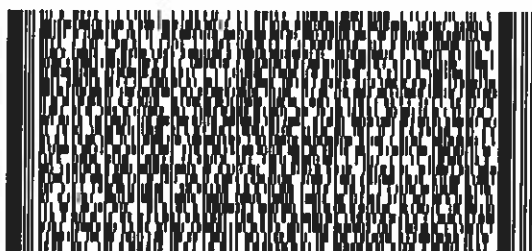
0201

XH JCCA

94105

CA-US

SFO



FOLD on this line and place in shipping pouch with bar code and delivery address visible

1. Fold the first printed page in half and use as the shipping label.
2. Place the label in a waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.
3. Keep the second page as a receipt for your records. The receipt contains the terms and conditions of shipping and information useful for tracking your package.



<i>package id</i>	<i>from</i>	<i>vendor</i>
0022254	Craig A. Bruens	FedEx
<i>ship date</i>	(cabruens)	<i>tracking number</i>
Tue, May 27 2014	Debevoise & Plimpton LLP	770106283650
<i>to</i>	919 Third Avenue	<i>service</i>
Rachel Tennis Attorney-	New York, NY 10022	FedEx Priority Overnight®
Advsr orc,3-4	United States	<i>packaging</i>
U.S.Environmental	6548	FedEx® Envelope
Protection Agency	<i>billing</i>	<i>signature</i>
75 HAWTHORNE ST	24239 - client.1001 - matter	Deliver without signature
SAN FRANCISCO, CA	(24239.1001)	<i>courtesy quote</i>
94105-3920	<i>operator</i>	18.94
United States	Harriet R. Cohen	<i>Quote may not reflect all</i>
415-972-3746	6401	<i>accessorial charges</i>
<i>residential address</i>	hrcohen@debevoise.com	
No	<i>create time</i>	
<i>return label</i>	05/27/14, 5:12PM	
No		
<i>notification type</i>		
Delivery		
<i>notification recipients</i>		
cabruens@debevoise.com		
hrcohen@debevoise.com		

Legal Terms and Conditions

Tendering packages by using this system constitutes your agreement to the service conditions for the transportation of your shipments as found in the applicable FedEx Service Guide, available upon request. FedEx will not be responsible for any claim in excess of the applicable declared value, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the applicable FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of 100 USD or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is 500 USD, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see applicable FedEx Service Guide. FedEx will not be liable for loss or damage to prohibited items in any event or for your acts or omissions, including, without limitation, improper or insufficient packaging, securing, marking or addressing, or the acts or omissions of the recipient or anyone else with an interest in the package. See the applicable FedEx Service Guide for complete terms and conditions. To obtain information regarding how to file a claim or to obtain a Service Guide, please call 1-800-GO-FEDEX (1-800-463-3339).

©2003-2014 Lynch Marks LLC. All rights reserved. PS|Ship™ is a trademark of Lynch Marks LLC.

FedEx service marks are owned by Federal Express Corporation and are used by permission.

Other product and company names listed are trademarks or trade names of their respective companies.